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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

STEVEN LYLE HADEN,

Defendant and Appellant.

A143823

(San Mateo County
Super. Ct. No. SC042504)

INTRODUCTION

Steve Lyle Haden appeals from the order of the San Mateo County Superior Court denying his petition under Penal Code section 1170.126 to resentence him as provided by the new resentencing procedure enacted in November 2012 as part of Proposition 36, the “Three Strikes Reform Act of 2012.”¹ Counsel has filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436, 441-442 and *Anders v. California* (1967) 386 U.S. 738, finding no arguable issues and requesting this court review the entire record to determine whether there are any arguable issues which, if resolved favorably to appellant would result in reversal or modification of the judgment. Having reviewed the record and finding no arguable issues, we shall affirm.

¹ The trial court’s denial of a petition for recall is an appealable order. (*Teal v. Superior Court* (2014) 60 Cal.4th 595, 597.)

BACKGROUND

In 1998, appellant pleaded no contest to infliction of corporal injury on a spouse (Pen. Code, § 273.5, subd. (a)²) and admitted a special allegation of personal use of a deadly weapon. (§ 1192.7, subd. (c)(23).) Appellant waived a jury trial of the special allegation under the Three Strikes Law (§§ 1170.12, subds. (c) (2) and 667, subd. (a)) and the court found the special allegation to be true in that appellant had been previously convicted of two robberies in North Dakota. On March 19, 1999, appellant was sentenced to a term of 25 years to life under the provisions of the Three Strikes Law. In 2000, this court affirmed that conviction in a nonpublished opinion. (*People v. Haden* (Jan. 25, 2000, A086575).)

The facts underlying his conviction are stated in our previous opinion. In sum: At 1 a.m. on March 3, 1998, appellant's wife was home in bed nursing their two week old son when appellant returned home, obviously intoxicated. He flipped on the lights and ripped the covers off of her. He called her a "bitch" and said he wanted "to finish this." He spat at her, called her a "stupid cunt," and forced her hand down on the bed. He threw some furniture against the wall behind the bed containing Sandra and the baby and knocked other furniture around. When she tried to reach for the telephone to call 911, he became really angry. He ripped the cord on the telephone and told her she could not call anyone. He exposed his penis and demanded that she orally copulate him. By this time, the baby was crying. Appellant went to the kitchen and returned with an eight-inch blade knife before she could gather up the baby and hide in the bathroom. Holding the knife, Haden told her " 'I could kill you.' " He thrust the knife at her three or four times, cutting her twice—once on her knee and her shin. Then, he started stabbing at the door and the hallway. He stopped stabbing when Redwood City police arrived and arrested appellant. He was verbally abusive to two police officers, uttering racial and gender slurs and spitting in the face of an officer.

² All further undesignated code sections refer to the Penal Code.

“In April 1998, Haden was charged by information with assault with a deadly weapon, inflicting corporal injury on his spouse, making terrorist threats, child endangerment and misdemeanor battery on a police officer. (See §§ 243, subd. (b), 245, subd. (a)(1), 273a, subd. (a), 273.5, subd. (a), 422.) Each of the felony counts also alleged the personal use of a deadly weapon. (See §§ 1192.7, subd. (c)(23), 12022, subd. (b)(1).) The information also alleged that Haden had been convicted of two North Dakota robberies in 1983. (See §§ 667, subd. (a), 1170.12, subd. (c)(2), 1203, subd. (e)(4).)” (*People v. Haden, supra*, p. 2.) As stated above, appellant pleaded no contest to infliction of corporal injury on a spouse (§ 273.5, subd. (a)) and admitted a special allegation of personal use of a deadly weapon. (§ 1192.7, subd. (c)(23).) The special allegation under the Three Strikes Law was found true by the court.

On September 30, 2014, having been incarcerated since 1999, appellant petitioned the trial court for resentencing under Penal Code section 1170.126. The trial court denied the petition, finding him ineligible.

DISCUSSION

“[I]n 2012, the electorate passed Proposition 36. The Act authorizes prisoners serving third strike sentences whose ‘current’ offense (i.e., the offense for which the third strike sentence was imposed) is not a serious or violent felony to petition for recall of the sentence and for resentencing as a second strike case. (See § 1170.126, subd. (f); see also §§ 667, subd. (e)(1), 1170.12, subd. (c)(1).)” (*People v. Johnson* (2015) 61 Cal. 4th 674, 679-680.) “In addition to reducing the sentence to be imposed for some third strike felonies that are neither violent nor serious, the Act provides a procedure by which some prisoners already serving third strike sentences may seek resentencing in accordance with the new sentencing rules. (§ 1170.126.) ‘An inmate is eligible for resentencing if . . . [¶] . . . [t]he inmate is serving an indeterminate term of life imprisonment imposed pursuant to [the Three Strikes law] for a conviction of a felony or felonies that are not defined as serious and/or violent. . . .’ (§ 1170.126, subd. (e)(1).) Like a defendant who is being sentenced under the new provisions, an inmate is *disqualified* from resentencing if any of

the exceptions set forth in section 667, subdivision (e)(2)(C) and section 1170.12, subdivision (c)(2)(C) are present. (§ 1170.126, subd. (e).)” (*Id.* at p. 682, italics added.)

Section 1170.126, subdivision (b) provides in relevant part that to qualify for a petition for recall, the conviction must be “a felony or felonies that are not defined as serious and/or violent felonies by . . . subdivision (c) of Section 1192.7.” Section 1192.7, subdivision (c) includes as a “ ‘serious felony’ ” “any felony in which the defendant personally used a dangerous or deadly weapon.” (§ 1192.7, subd. (c)(23).)

Here, appellant pleaded guilty to a felony (§ 273.5, subd. (a)) and admitted the serious felony special allegation of personal use of a deadly weapon. (§ 1192.7, subd. (c)(23).) Consequently, he was statutorily ineligible for recall of the sentence.

Appellant was represented by counsel throughout the proceedings. The court did not err in finding him ineligible and no other error appears. We have conducted the requested review and conclude that there are no arguable issues.

The order denying the petition for recall is affirmed.

REARDON, J.

We concur:

RUVOLO, P. J.

STREETER, J.

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